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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,665	10/26/2005	Peter Lawrence Bailey	J3706 (C)	2390

201 7590 01/10/2008  
UNILEVER INTELLECTUAL PROPERTY GROUP  
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EXAMINER
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BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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01/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/540,665

Applicant(s)

BAILEY ET AL.

Examiner

Charles I. Boyer

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is responsive to applicants' amendment and response received December 17, 2007. Claims 1-15 are currently pending.

#### ***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The rejection of claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over Wells et al, US 2003/0202952 is withdrawn in view of applicants' amendment and response.
3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells et al, US 2003/0223952.

Wells et al teach a shampoo composition comprising 10% ammonium lauryl ether (3EO) sulfate, 2% sodium lauryl sulfate, 2% ammonium lauryl sulfate, 2%

cocoamidopropyl betaine, 2% sodium lauroamphoacetate, 0.5% cationic polymer, and the balance water (page 13, example 4). The compositions may include anti-dandruff agents such as azoles (§151), and anti-microbial agents may be added such as clotrimazole (§156). Accordingly, it would have been obvious to one of ordinary skill in the art to include an azole anti-dandruff agent, e.g. clotrimazole, or to include clotrimazole as an anti-microbial agent in example 4 with a reasonable expectation of successfully obtaining an effective anti-dandruff shampoo.

4. Claims 1-6, and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan et al, US 2003/0133899.

Fan et al teach personal cleansing compositions, an example of which is an anti-dandruff shampoo comprising 6% alkyl ether sulfate, 6% alkyl ether (1EO) sulfate, additional surfactant, 0.1% cationic polymer, and 1% clotrimazole, wherein the clotrimazole is soluble in the composition (§83). These compositions may contain a mixture of amphoteric surfactants such as alkylamidopropyl betaines and amphopropionates (page 6, claim 4). Accordingly, it would have been obvious to one of ordinary skill in the art to include a mixture of amphoteric surfactants in the above example with a reasonable expectation of successfully obtaining an effective anti-dandruff shampoo.

5. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel, US 5,747,435.

Patel teaches personal cleansing compositions, an example of which is an anti-dandruff shampoo comprising 7% alkyl ether (2EO) sulfate, 7.8% cocoamidopropyl betaine, 0.6% cationic polymer, and 0.5% climbazole wherein the climbazole is soluble in the composition (col. 17, examples 31 and 32). These compositions may contain a mixture of amphoteric surfactants such as betaines and amphotacetates (col. 3, lines 7-12). Accordingly, it would have been obvious to one of ordinary skill in the art to include an amphotacetate in the above examples with a reasonable expectation of successfully obtaining an effective anti-dandruff shampoo.

6. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricca, US 6,475,474 alone or in view of Patel, US 5,747,435.

Ricca teaches personal cleansing compositions, an example of which comprises 7% alkyl ether (2EO) sulfate, 2% cocoamidopropyl betaine, 1% sodium cocoamphotacetate, and 0.3% cationic polymer (col. 10, example 1-3). These compositions may contain typical additives such as anti-dandruff agents (col. 6, lines 18-20). The reference does not teach climbazole as an anti-dandruff agent, however, as climbazole is an extremely well-known and commonly used anti-dandruff agent used in the art, it would have been obvious to one of ordinary skill in the art to include a well-known anti-dandruff agent in the above examples with a reasonable expectation of successfully obtaining an effective anti-dandruff shampoo.

In the alternative, recall that Patel teaches an anti-dandruff shampoo comprising soluble climbazole. One of ordinary skill in the art then, wishing to impart anti-dandruff

properties to the personal cleansing composition of Ricca, would note the teachings of Patel that climbazole is a well-known and highly preferred anti-dandruff agent, and so select climbazole with a reasonable expectation of successfully obtaining an effective anti-dandruff shampoo.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272 1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Charles I Boyer  
Primary Examiner